

# EXHIBIT 3

**From:** Daniel Schwartz  
**To:** Rodgers, Andrew; Tomer, K. Brent; de Urioste, Alejandra; Rasor, Katherine; Wang, Diana; Janowski, Peter  
**Cc:** Jack Baughman; Elizabeth Lee; Ernest Butner; Tom Chen  
**Subject:** RE: [EXTERNAL] CFTC v. Gemini - Pre-Trial Schedule  
**Date:** Thursday, October 24, 2024 9:25:17 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[RE EXTERNAL RE CFTC v. Gemini.msg](#)

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Drew,

1. We do not understand your position regarding the exchange of demonstratives. The parties agreed in June to exchange opening demonstratives the night before trial (see attached). We see no reason to deviate from the parties' prior agreement. Please explain what has changed since the summer and why you now believe something you previously agreed to "is certainly not sufficient."
2. As stated in my prior email, we do not intend to withdraw any experts or any portions of any expert reports, nor do we see any reason to do so. If you have authority to support your suggestion that Gemini should withdraw portions of its expert reports while it has a motion for interlocutory appeal pending (and, even if that motion is denied, has a right to appeal Judge Hellerstein's summary judgment order after trial), please provide it to us.
3. Related to point 2, does the CFTC plan to withdraw any expert testimony or any portions of its expert report? If so, please identify the portions of the relevant transcript and report that the CFTC plans to withdraw.

-Dan

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**From:** Rodgers, Andrew <ARodgers@CFTC.gov>  
**Sent:** Wednesday, October 23, 2024 6:02 PM  
**To:** Daniel Schwartz <dschwartz@bkbfirm.com>; Tomer, K. Brent <KTomer@CFTC.gov>; de Urioste, Alejandra <ADeUrioste@CFTC.gov>; Rasor, Katherine <KRasor@CFTC.gov>; Wang, Diana <DWang@CFTC.gov>; Janowski, Peter <PJanowski@CFTC.gov>  
**Cc:** Jack Baughman <jbaughman@bkbfirm.com>; Elizabeth Lee <elee@bkbfirm.com>; Ernest Butner <ebutner@bkbfirm.com>; Tom Chen <tchen@bkbfirm.com>  
**Subject:** RE: [EXTERNAL] RE: CFTC v. Gemini - Pre-Trial Schedule

Dan,

It sounds like we are still close on the stipulation. In terms of the opening slides/demonstratives, the Court was pretty clear at the summary judgment hearing that it does not believe in trial by surprise. We are ok exchanging any slides/demonstratives a couple days before the start of trial, but the night before is certainly not sufficient and would likely delay the start of trial if there are objections (an outcome that would surely irk the judge). How about we exchange opening slides/demonstratives on January 8? If that works, we can file the stip as proposed in the attached.

As for experts, you may have misunderstood our question. We asked if you plan on withdrawing any proposed expert testimony. Can you confirm that you are not withdrawing any portions of your experts' reports in light of the judge's ruling?

Drew

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**From:** Daniel Schwartz <[dschwartz@bkbfirm.com](mailto:dschwartz@bkbfirm.com)>

**Sent:** Wednesday, October 23, 2024 2:25 PM

**To:** Rodgers, Andrew <[ARodgers@CFTC.gov](mailto:ARodgers@CFTC.gov)>; Tomer, K. Brent <[KTomer@CFTC.gov](mailto:KTomer@CFTC.gov)>; de Urioste, Alejandra <[ADeUrioste@CFTC.gov](mailto:ADeUrioste@CFTC.gov)>; Rasor, Katherine <[KRasor@CFTC.gov](mailto:KRasor@CFTC.gov)>; Wang, Diana <[DWang@CFTC.gov](mailto:DWang@CFTC.gov)>; Janowski, Peter <[PJanowski@CFTC.gov](mailto:PJanowski@CFTC.gov)>

**Cc:** Jack Baughman <[jbaughman@bkbfirm.com](mailto:jbaughman@bkbfirm.com)>; Elizabeth Lee <[elee@bkbfirm.com](mailto:elee@bkbfirm.com)>; Ernest Butner <[ebutner@bkbfirm.com](mailto:ebutner@bkbfirm.com)>; Tom Chen <[tchen@bkbfirm.com](mailto:tchen@bkbfirm.com)>

**Subject:** [EXTERNAL] RE: CFTC v. Gemini - Pre-Trial Schedule

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Drew:

We see no need to exchange opening demonstratives in advance. In most cases they are not exchanged earlier than the morning of trial. We previously agreed to exchange them the night before. We see no reason to reopen the parties' agreement.

We have no plans to withdraw any experts, though we do not intend to offer evidence that we do not believe is relevant to the issues being tried. Is the CFTC planning to change its offered expert testimony in any way? If so, please advise.

We have noted your dates of availability.

Thank you.

Dan

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**From:** Rodgers, Andrew <[ARodgers@CFTC.gov](mailto:ARodgers@CFTC.gov)>

**Sent:** Tuesday, October 22, 2024 6:18 PM

**To:** Daniel Schwartz <[dschwartz@bkbfirm.com](mailto:dschwartz@bkbfirm.com)>; Tomer, K. Brent <[KTomer@CFTC.gov](mailto:KTomer@CFTC.gov)>; de Urioste, Alejandra <[ADeUrioste@CFTC.gov](mailto:ADeUrioste@CFTC.gov)>; Rasor, Katherine <[KRasor@CFTC.gov](mailto:KRasor@CFTC.gov)>; Wang, Diana <[DWang@CFTC.gov](mailto:DWang@CFTC.gov)>; Janowski, Peter <[PJanowski@CFTC.gov](mailto:PJanowski@CFTC.gov)>

**Cc:** Jack Baughman <[jbaughman@bkbfirm.com](mailto:jbaughman@bkbfirm.com)>; Elizabeth Lee <[elee@bkbfirm.com](mailto:elee@bkbfirm.com)>; Ernest Butner <[ebutner@bkbfirm.com](mailto:ebutner@bkbfirm.com)>; Tom Chen <[tchen@bkbfirm.com](mailto:tchen@bkbfirm.com)>

**Subject:** RE: CFTC v. Gemini - Pre-Trial Schedule

Dan,

We are generally in agreement with the scheduling stipulation, however, the date for exchanging opening statement demonstratives needs to precede the pre-trial conference so we can address objections before the start of trial. We have proposed January 3. Let us know your position.

Also, can you let us know your position on experts and whether you intend to withdraw any proposed expert testimony? If needed, we are available Thursday at 2pm to confer.

As for the letter requesting oral argument, we would note the Court's rules on that point and take no position on your proposed request. We are not available Nov. 1, 5, 7, 8, 11, 15, 21, 22, 26, 27 & 29.

Thanks.

Drew

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**From:** Daniel Schwartz <[dschwartz@bkbfirm.com](mailto:dschwartz@bkbfirm.com)>

**Sent:** Friday, October 18, 2024 12:29 PM

**To:** Rodgers, Andrew <[ARodgers@CFTC.gov](mailto:ARodgers@CFTC.gov)>; Tomer, K. Brent <[KTomer@CFTC.gov](mailto:KTomer@CFTC.gov)>; de Urioste, Alejandra <[ADeUrioste@CFTC.gov](mailto:ADeUrioste@CFTC.gov)>; Rasor, Katherine <[KRasor@CFTC.gov](mailto:KRasor@CFTC.gov)>; Wang, Diana <[DWang@CFTC.gov](mailto:DWang@CFTC.gov)>; Janowski, Peter <[PJanowski@CFTC.gov](mailto:PJanowski@CFTC.gov)>

**Cc:** Jack Baughman <[jbaughman@bkbfirm.com](mailto:jbaughman@bkbfirm.com)>; Elizabeth Lee <[elee@bkbfirm.com](mailto:elee@bkbfirm.com)>; Ernest Butner <[ebutner@bkbfirm.com](mailto:ebutner@bkbfirm.com)>; Tom Chen <[tchen@bkbfirm.com](mailto:tchen@bkbfirm.com)>

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Counsel,

Attached is a revised stipulation. If you would like to meet and confer to discuss, we are available next Wednesday between 1 and 3 or next Thursday between 1 and 5.

Also, we plan to send the Court a letter requesting oral argument on our motion for interlocutory appeal. Please let us know if there are any dates in November on which you are not available.

Best,  
Dan

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**From:** Daniel Schwartz <[dschwartz@bkbfirm.com](mailto:dschwartz@bkbfirm.com)>

**Sent:** Tuesday, October 15, 2024 4:21 PM

**To:** Rodgers, Andrew <[ARodgers@CFTC.gov](mailto:ARodgers@CFTC.gov)>; Tomer, K. Brent <[KTomer@CFTC.gov](mailto:KTomer@CFTC.gov)>; de Urioste, Alejandra <[ADeUrioste@CFTC.gov](mailto:ADeUrioste@CFTC.gov)>; Rasor, Katherine <[KRasor@CFTC.gov](mailto:KRasor@CFTC.gov)>; Wang, Diana <[DWang@CFTC.gov](mailto:DWang@CFTC.gov)>; Janowski, Peter <[PJanowski@CFTC.gov](mailto:PJanowski@CFTC.gov)>

**Cc:** Jack Baughman <[jbaughman@bkbfirm.com](mailto:jbaughman@bkbfirm.com)>; Elizabeth Lee <[elee@bkbfirm.com](mailto:elee@bkbfirm.com)>; Ernest Butner <[ebutner@bkbfirm.com](mailto:ebutner@bkbfirm.com)>; Tom Chen <[tchen@bkbfirm.com](mailto:tchen@bkbfirm.com)>

**Subject:** Re: CFTC v. Gemini - Pre-Trial Schedule

Counsel,

We are not available on Thursday. We will get back to you with alternate times.

Thanks,  
Dan

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**From:** Rodgers, Andrew <[ARodgers@CFTC.gov](mailto:ARodgers@CFTC.gov)>

**Sent:** Friday, October 11, 2024 12:00 PM

**To:** Daniel Schwartz <[dschwartz@bkbfirm.com](mailto:dschwartz@bkbfirm.com)>; Tomer, K. Brent <[KTomer@CFTC.gov](mailto:KTomer@CFTC.gov)>; de

Urioste, Alejandra <[ADeUrioste@CFTC.gov](mailto:ADeUrioste@CFTC.gov)>; Rasor, Katherine <[KRasor@CFTC.gov](mailto:KRasor@CFTC.gov)>; Wang, Diana <[DWang@CFTC.gov](mailto:DWang@CFTC.gov)>; Janowski, Peter <[PJanowski@CFTC.gov](mailto:PJanowski@CFTC.gov)>

**Cc:** Jack Baughman <[jbaughman@bkbfirm.com](mailto:jbaughman@bkbfirm.com)>; Elizabeth Lee <[elee@bkbfirm.com](mailto:elee@bkbfirm.com)>; Ernest Butner <[ebutner@bkbfirm.com](mailto:ebutner@bkbfirm.com)>; Tom Chen <[tchen@bkbfirm.com](mailto:tchen@bkbfirm.com)>

**Subject:** CFTC v. Gemini - Pre-Trial Schedule

Counsel,

Attached please find a proposed scheduling stipulation modeled from the prior stipulation that was filed in June. Let us know if you have comments or otherwise consent to the deadlines and filing of the stipulation.

Should you wish to confer over the schedule or any other issues related to the Court's summary judgment ruling, including whether you intend to withdraw any proposed expert testimony, please provide your availability. Our team has availability Thursday, October 17 at 12pm.

Thanks.

Drew



**Andrew Rodgers**

Trial Attorney, Division of Enforcement

**Commodity Futures Trading Commission**

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